

Mid-Rivers COMMUNICATIONS



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October 17, 2011

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135,
WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45,
and WC Docket 03-109

Ex Parte Presentation

Mr. Chairman:

We appreciate the efforts that our rural associations have undertaken on behalf of their constituents. We are concerned, however, that the attempts to negotiate resolutions to the difficult issues facing our industry may result in negative impacts on individual companies and may ignore consequences to consumers, businesses and the economy in rural America. **We are especially concerned with the potentially negative consequences on consumers served by rural Competitive Eligible Telecommunications Carriers (CETCs), both wireline and wireless.**

As an RLEC, a rural CLEC, and a rural wireless CETC, our companies' historic investments and operational structures have been based upon a specific statutory and regulatory framework. Simply put, after-the-fact modifications to this regulatory framework must not interfere with our companies' ability to recover historic costs, or our rural customers' expectation and right to continued comparable services at reasonable and comparable costs.

Mid-Rivers Communications is a rural Competitive Local Exchange Carrier (CLEC) providing service in Price Cap Carrier exchanges/wire centers where **both** carriers are receiving support today. This places us in a very **unique set of carriers** requiring a **unique solution**. Industry USF/ICC reform plans currently under consideration fail to address the needs of such carriers and the rural customers we serve. The potential combined effect of failing to include qualifying rural CLEC access charges in reform mechanisms, together with the proposed elimination of USF support for all CETCs, would have a devastating impact on Mid-Rivers and other similarly situated carriers. **These reforms would punish our company for investments made as a facilities-based CLEC and rural wireless CETC in previously unserved and underserved areas – the type of investment that was clearly supported and encouraged by the 1996 Act and worked as intended in our unique rural areas.**

Based on our understanding of the “worst-case scenario” of current proposals, our rural CLEC could see a **54% reduction in access revenue**, or roughly \$2.4 Million less in annual access revenue at the end of the reform period versus the levels received today. We could also suffer a **100% reduction in CETC USF support** for our rural CLEC and wireless CETC operations. Though the USF support amounts to less than a million dollars annually to each operation, the funding is critical to sustaining our unique operations in extremely rural areas of Montana. The combined USF and access reductions will greatly affect our ability to continue providing quality voice, wireless and broadband to the approximately **14,000 rural wireline and 2,000 rural wireless customers** served by our CETC operations today, as well as the services provided to the customers of many other wireless carriers roaming on our network in the many areas where we provide the only cellular signal.

Phasing out all CETC support as proposed by the American’s Broadband Connectivity (ABC) Plan **undermines the network build-out progress that has been accomplished as a result of the 1996 Telecom Act**. Rural CLECs in many areas have been effective in addressing the concern of a “rural-rural divide” created by the lack of investment by Price Cap carriers during the past 15 years. The competitive provisions of the 1996 Act provided an incentive for rural CLECs to invest where the Price Cap carriers failed to do so, despite the fact that the Price Cap carrier received USF support for many of these areas. To preserve the availability of competitive services in rural areas, CLECs must also be able to recover the contemplated reduction in access charges through reform mechanisms, as previously recognized under the “rural exemption.”

Following the enactment of the Communications Act of 1996, our company responded to the needs of many Montana communities previously underserved by the Incumbent Price Cap Carrier by becoming a facilities-based CLEC in seven Montana Price Cap Carrier exchanges. The Montana Public Service Commission granted our company Eligible Telecommunications Carrier (ETC) status in these exchanges, allowing us to receive a relatively modest but critical amount of USF support (a total of approximately \$850,000 annually) subject to a range of on-going service quality, exchange build-out, and associated reporting requirements that continue today. Our rural CLEC provided broadband services in many of these exchanges before it was available from the Incumbent, and **today we continue to be the ONLY wireline broadband provider in four of these seven CLEC exchanges. Rural communities like these in Montana could possibly revert to having no broadband services if support is eliminated for the only current broadband provider – the rural CLEC – as proposed by the ABC Plan.**

In this specific situation, the Right of First Refusal (RoFR) as proposed by the ABC Plan would reward a Price Cap Carrier that has failed to provide broadband despite receiving USF, while punishing the competitive provider that responded to the needs of consumers when the Price Cap ILEC would not. It would be neither competitively neutral nor in the best interests of subscribers to tilt the scales in favor of the very Price Cap ILECs that the record shows have a historical lack of interest in bringing broadband to rural America. Rural CLECs and our customers in these situations should not be punished simply because we have not been able to complete the regulatory process of becoming the Incumbent, when for all intents and purposes the rural CLEC is acting as the Incumbent. Mid-Rivers has in fact received “co-Incumbency”

status in one CLEC exchange where we serve 98% of the customers, but the FCC has not yet addressed our request for a study area waiver in this area.

Mid-Rivers operates in a unique situation where we as a competitive carrier and the Price Cap Carrier Incumbent BOTH receive support today in a Price Cap exchange/wire center, not to be confused with the “donut/donut hole situation relating to *unsupported* carriers. Mid-Rivers proposes that the one carrier designated for going-forward support should be determined NOT by a RoFR afforded to the Incumbent, but rather by State Public Service Commissions, using a formula that factors in each provider’s current investment in the network, current market share, ability to extend service to unserved areas, and other qualitative factors such as density of the market area and quality of service.

This alternative solution to the RoFR and other aspects of the ABC Plan is based on the elimination of Identical Support, and the provision in its place of **cost-based support to the carrier with a proven commitment to invest in these areas.** As rural wireline carriers that operate no differently than other Rate of Return (RoR) rural carriers, Rural CLEC costs could be determined using a cost study model very similar to the RoR model utilized today or similar to any new RoR model resulting from the currently pending reforms. Valid models for determining comparable network costs of rural wireless carriers have also been presented throughout these proceedings, and we propose rural wireless carriers be reimbursed based on actual costs rather than through a reverse auction in the Mobility Fund. This strategy will do away with support for CETCs whose costs do not warrant the receipt of USF, resulting in significant reductions in the size of the Fund, and accomplishing the goal of preserving and encouraging quality voice and broadband services in rural areas while still taking into account the Commission’s concerns regarding constraints on available funding.

It is also critical that the task of designating the one supported carrier based on the use of such a formula remain with the State Public Service Commissions. The FCC must commit to keeping ETC certification decisions with the State Public Service Commissions for wireline and wireless carriers. State Public Service Commissions have a much better understanding of the carrier and customer needs in their states. CETCs in Montana and possibly many other states are already subject to Carrier of Last Resort (COLR)-type obligations through ETC designations that require regular reporting on quality of service, the provider’s ability to meet customer requests, and future build-out plans, offering an existing framework for the designation and on-going certifications of ETC’s at the State level.

With regard to ICC reform for rural CLECs, the record clearly showed in the 2001 Rural CLEC Access Order that rural CLECs were **different** from competing non-rural ILECs. Rural CLECs serving in Price Cap carrier areas must also be differentiated for the purposes of access charge recovery during this time of major transition in the industry. **Qualifying rural CLEC access revenue, as established in the Rural CLEC Access Order, must be treated in the same manner as the access revenue of other companies operating in high-cost rural areas, and must be included in any access charge recovery mechanism implemented during the reform of the USF and ICC programs.** Rural CLECs must be allowed to participate in the Recovery Mechanism and

any other reform measures to transition support as ICC rates are ratcheted down, allowing a predictable revenue stream and ensuring a smooth transition that will not shift an unbearable portion of network support costs onto the backs of rural consumers.

On behalf of our companies, as an RLEC, a wireline CLEC, and a wireless CETC, we want to state clearly, on the record, that **we specifically reserve all legal rights and remedies, including, but not limited to, the right to recover our established operational costs and historic capital investments.** The policy positions advocated by an association do not constitute a waiver of the legal rights of any association member. We believe that this formal reservation of rights is required at this time, as in a rush to implement an industry-sponsored solution, the very purpose of Section 254 – the preservation and advancement of universal service – has been undermined, and we must preserve our legal rights as a result.

In accordance with the requirements of Section 1.1206 of the Commission's Rules, this letter is being filed electronically with the Secretary's Office in each of the referenced dockets. We appreciate the opportunity to present this information to the Commission and look forward to a Final Order that specifically addresses the unique needs of rural consumers served by rural CLECs in Price Cap Carrier areas and rural wireless carriers.



BILL WADE
General Manager

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Montana Public Service Commission
MT Congressman Denny Rehberg
MT Senator Max Baucus
MT Senator Jon Tester